



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MUKS KUM OL HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's amended application for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent; late fees; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent and late fees?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced March 1, 2012 and the tenant paid a security deposit of \$278.00. At the time of forming the tenancy the rent was set at \$556.00 due on the 1st day of every month. The tenant's rent contribution was subsequently reduced to \$330.00 per month.

The tenant failed to pay rent when due on September 1, 2013 and on September 5, 2013 the landlord mailed a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) to the tenant. The Notice indicates \$340.00 was outstanding (including a \$10.00 late fee) and has a stated effective date of September 20, 2013. The tenant paid \$200.00 on September 13, 2013 leaving a balance owing of \$140.00.

On October 4, 2013 the landlord mailed another 10 Day Notice to End Tenancy for Unpaid Rent (the second Notice) to the tenant. The second Notice indicates \$480.00

was outstanding and has a stated effective date of October 19, 2013. The tenant did not pay the rental arrears and did not file to dispute the Notice.

The landlord did not collect any rent for the months of November or December 2013 although the tenant stated that \$860.00 was offered to the landlord by the Ministry on or about December 5, 2013.

The tenant stated that she is in the process of moving out of the rental unit. The parties were agreeable that the tenant would be provided until December 15, 2013 to finish vacating the rental unit.

Both parties provided consistent testimony that the tenant's income had declined since August 2013. The tenant stated that she requested documents from the landlord in September 2013 so that she may apply for a reduction to her rent contribution but the staff person working in the office was unable to provide the forms. The landlord provided detailed testimony as to conversations that took place with the tenant and providing the tenant with forms to complete in October 2013 so that an application could be made to reduce the tenant's rent contribution. The landlord submitted that, despite providing her with the necessary forms and information, the tenant did not submit all the necessary documentation in order to apply for an adjustment to the rent contribution.

In any event, the landlord stated that the minimum rent that must be paid for a 4-bedroom unit such as the one occupied by the tenant is \$308.00 per month even if the tenant has no income.

With respect to late fees, the landlord withdrew this portion of the claim.

As a matter of record, the landlord proposed the parties meet at the rental unit at 1:00 p.m. on December 15, 2013 for purposes of participating in a move-out inspection and return of the keys. The tenant was uncertain of her work schedule; however, the tenant was informed and understood that she is required to propose an alternative date and time for the move-out inspection to the landlord if she is unable to participate in a move-out inspection at the date and time proposed by the landlord. Alternatively, the tenant may choose to be represented by an agent at the move-out inspection.

Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I am satisfied the tenant was served with two 10 Day notices to End Tenancy for Unpaid Rent and the tenant failed to pay the outstanding rent and did not file to dispute the 10 Day Notices within five days of receiving the Notices; therefore, I find the tenancy ended for unpaid rent pursuant to section 46(5) of the Act.

As the landlord was willing to give the tenant until December 15, 2013 to vacate the rental unit, I provide the landlord with an Order of Possession effective at 1:00 p.m. on December 15, 2013. The tenant is required to leave the rental unit vacant, reasonably clean, and undamaged by 1:00 p.m. on December 15, 2013.

I accept the undisputed evidence that the tenant's rent contribution was reduced to \$330.00 per month during the tenancy. In the absence of any evidence or documentation to indicate the tenant's rent contribution was reduced further I find the landlord entitled to recover \$330.00 per month from the tenant until December 15, 2013. Should the landlord suffer further loss of rent after December 15, 2013 due to the tenant's violation of the Act the landlord is at liberty to file another Application for Dispute Resolution to seek further compensation.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent – September 2013 (\$330.00 less \$200.00)	\$ 130.00
Unpaid Rent – October 2013	330.00
Loss of Rent – November 2013	330.00
Loss of Rent – December 1 thru 15, 2013	165.00
Filing fee	50.00
Less: security deposit	<u>(278.00)</u>
Monetary Order	\$ 727.00

Conclusion

The landlord has been provided an Order of Possession to be effective at 1:00 p.m. on December 15, 2013. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$727.00 to serve upon the tenant and enforce as necessary.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 10, 2013

Residential Tenancy Branch

